



**CITY OF SUNNYVALE
REPORT
Administrative Hearing**

January 12, 2005

SUBJECT: **2004-0907 - Off The Hookah Lounge** [Applicant]
 Dubrovnik Associates [Owner]: Application on a 5,271
square-foot site located at **198 South Murphy Avenue** in a
DSP-2 (Downtown Specific Plan - Block 2) Zoning District.
(APN: 209-06-026);

Motion Special Development Permit on a 5,271 square-foot site to
allow dancing at a smoking lounge from 8 p.m. to 12 a.m.
Sunday thru Thursdays and 8 p.m. to 2 a.m. Fridays and
Saturdays.

REPORT IN BRIEF

Existing Site Historic two-story retail building on Murphy Avenue
Conditions

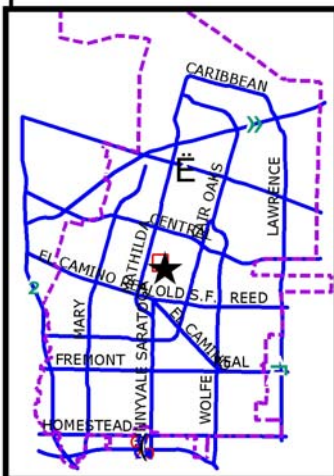
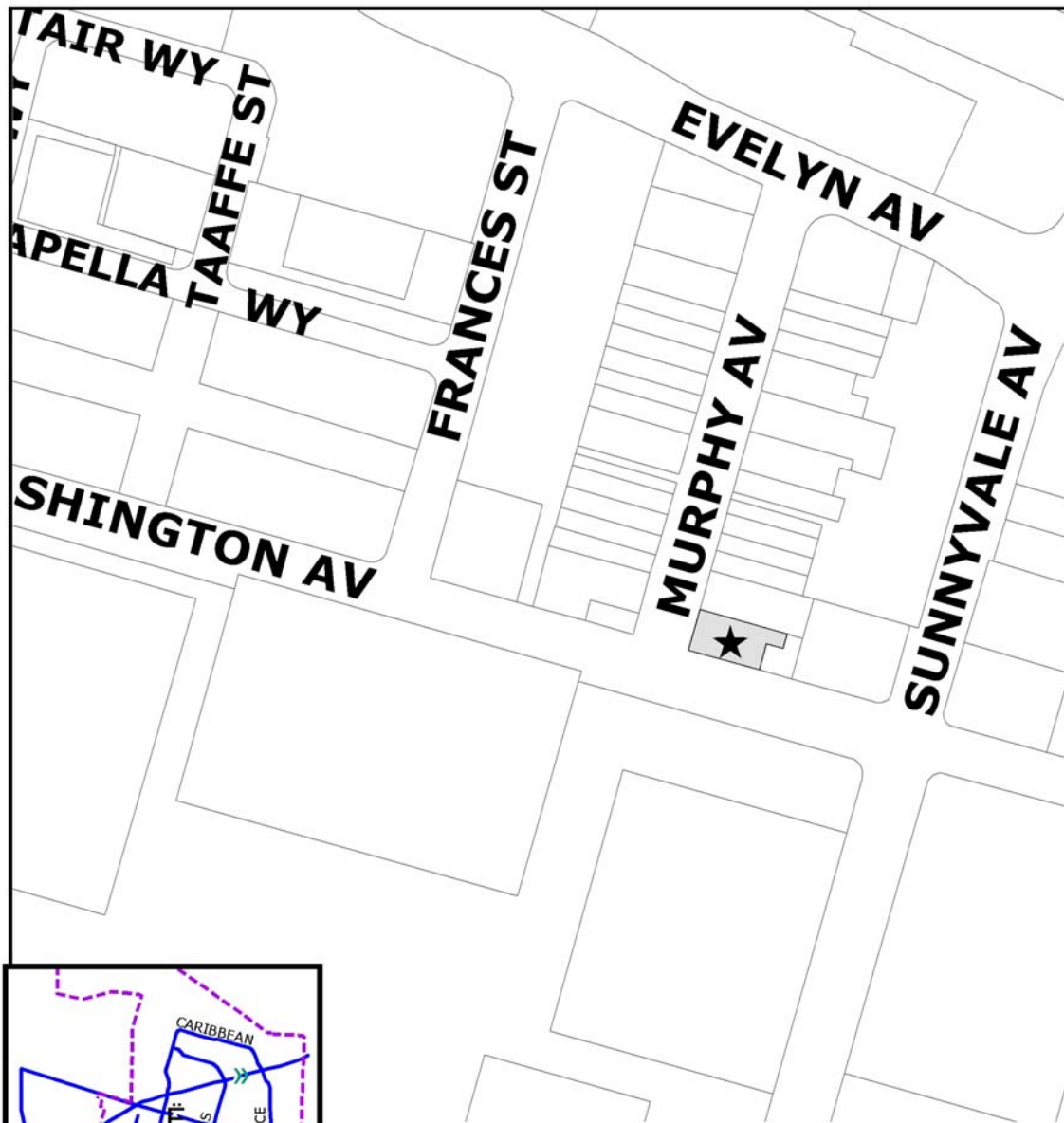
Surrounding Land Uses

North	Historic Murphy Avenue District
South	Nail Salon, Washington Avenue and Macy's Parking Lot
East	Parking District lot
West	Historic Murphy Avenue District

Issues Compliance with regulations for smoking
establishments
Impact on surrounding properties

Environmental A Class 1 Categorical Exemption relieves this project
Status from California Environmental Quality Act provisions
and City Guidelines.

Staff Approve with Conditions
Recommendation



**198 S Murphy Ave
Special Development Permit**

0 95 190 380 Feet



PROJECT DATA TABLE

	<u>EXISTING</u>	<u>PROPOSED</u>	<u>REQUIRED/ PERMITTED</u>
General Plan	Downtown Specific Plan	Same	Same
Zoning District	Block 2	Same	Same
Lot Size (s.f.)	5,271 s. ft.	Same	No min.
Gross Floor Area (s.f.)	2,000	Same	No max.
Lot Coverage (%)	100%	Same	No max.
Building Height (ft.)	Approx 28 ft.	Same	36 ft. max.
No. of Stories	2	Same	3 max.

ANALYSIS**Description of Proposed Project**

This Special Development Permit is to allow customer dancing to pre-recorded music at a smoking lounge. Live bands or hired dancers and acts are not part of this application. The previous Special Development Permit prohibited dancing or other entertainment unless allowed through a subsequent Special Development Permit. This request is the result of a Neighborhood Preservation complaint received in November 2004 regarding loud music and dancing at this location.

Background

Previous Actions on the Site: The following table summarizes previous planning applications related to the subject site.

File Number	Brief Description	Hearing/Decision	Date
1991-0089	Use Permit to renovate building for retail and office use	City Council Approved	3/19/91
1989-0578	Renovate exterior and front with awnings, paint	Heritage Preservation Commission Approved	5/30/96
1999-0952	Remodel storefront on the Kirkish Building	Staff Level Consistent with the 1991 plan	8/23/99

File Number	Brief Description	Hearing/Decision	Date
2002-0708	Exterior façade renovation in landmark district	Staff level Approved	9/18/02
2003-0668	Special Development Permit to allow a "Hookah" (pipe smoking of tobacco products) lounge.	Administrative Hearing Approved	9/24/03

Environmental Review

A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines. Class 1 Categorical Exemption includes minor modifications to existing facilities.

Special Development Permit

Detailed Description of Use: This Special Development Permit is to allow customer dancing to pre-recorded music at a smoking lounge. The previous Special Development Permit approved in 2003 allowed three uses for this tenant space.

- **Nighttime smoking lounge** for hookah pipes (hookah is a smoking pipe for flavored tobacco). No cigarettes, cigars, or regular pipes are allowed.
- **Nighttime bar serving beer and wine** as well as other non-alcoholic beverages.
- **Extra restaurant seating during the day** for the adjacent Dish Dash restaurant during the lunch hour rush

As required by the previous Conditions of Approval, dancing or other entertainment requires approval of a subsequent Special Development Permit. The smoking lounge is permitted as an owner-operator business, which is an exemption under the California State Smoke-free Workplace law.

In order to qualify as an owner-operated smoking establishment, the following conditions must be met:

1. No one is paid to assist, on a temporary or regular basis, in the in-house operation of the business, whether serving customers or performing other duties or services such as cleaning the premises.
2. No salaried service or contract employee – such as an employee of a cleaning service, a bookkeeper, a musician, caterer, etc. – may work in the bar.

3. If volunteers help in the operation of the business, they cannot be compensated in any way for their service. Tips are a form of compensation and anyone receiving tips would be considered an employee of the business.

(Quoted from the Legal Parameters of the California Smoke-free Workplace Law (Labor Code 6404.5))

This business has filed papers with the City of Sunnyvale stating that they comply with the provisions of the California Smoke-free Workplace Law.

There are two primary concerns with this use: the operation of the dancing within the requirements of an owner-operated smoking lounge, and the concentration of dancing and other entertainment uses along Murphy Avenue.

In order for the dancing use to be considered in an owner-operated smoking establishment, no employees, DJs, or dancers may be hired to support the business. Live bands and professional dancing performances would be prohibited. Only an owner-operator qualified under the documents submitted to the City may play pre-recorded music. If these conditions are met, (Attachment B), the use would be in compliance with the Smoke-free Workplace Law.

Most of the spaces along Murphy serve alcohol in conjunction with a restaurant use. Many have dancing and some other type of entertainment. The 2003 Downtown Specific Plan states that three primary uses in the Murphy Avenue district shall be retail, entertainment and restaurants. No policy limits have been set on the amount of entertainment on Murphy Avenue.

Site Layout: The site layout will not change with this application. All dancing will occur in the “patio” area outside of the smoking lounge (see Attachment C, Floor Plan). No exterior changes are proposed with this project.

Parking/Circulation: This site is within the Downtown Parking District. No additional parking is required.

Conclusion

Compliance with Development Standards/Guidelines: The project meets all code requirements for Downtown Specific Plan Block 2. As conditioned, the project must also continue to meet the requirements of the California Smoke-free Workplace law.

Expected Impact on the Surroundings: This application is the result of a complaint from a neighboring business. Loud music was one of the concerns.

There is no specific decibel limit for music playing in a commercial establishment. That issue falls under the Nuisance ordinance, in which a Public Safety officer must be called out to make an individual determination on whether the noise is a nuisance. Staff did not find evidence of any special limitations to hours of operation or music decibel levels, and does not recommend any as a Condition of Approval.

Fiscal Impact

No fiscal impacts other than normal fees and taxes are expected.

Findings, General Plan Goals and Conditions of Approval

Staff was able to make the required Findings based on the justifications for the Special Development Permit.

- Findings and General Plan Goals are located in Attachment A.
- Conditions of Approval are located in Attachment B.

Public Contact

Notice of Public Hearing	Staff Report	Agenda
<ul style="list-style-type: none">• Published in the <i>Sun</i> newspaper• Posted on the site• 24 notices mailed to adjacent property owners and residents of the project site	<ul style="list-style-type: none">• Posted on the City of Sunnyvale's Website• Provided at the Reference Section of the City of Sunnyvale's Public Library	<ul style="list-style-type: none">• Posted on the City's official notice bulletin board• City of Sunnyvale's Website• Recorded for SunDial

Alternatives

1. Approve the Special Development Permit with attached conditions.
2. Approve the Special Development Permit with modified conditions.
3. Deny the Special Development Permit

Recommendation

Alternative 1.

Prepared by:

Diana O'Dell
Project Planner

Reviewed by:

Steve Lynch
Associate Planner

Attachments:

- A. Recommended Findings
- B. Recommended Conditions of Approval
- C. Site and Architectural Plans

Recommended Findings - Special Development Permit

Goals and Policies that relate to this project are:

Sunnyvale Downtown Specific Plan – P.LUC – 4 – Reinforce shopping, dining and entertainment uses in the downtown by expanding retail, theater and restaurant uses in the North of Washington District, Murphy Avenue Heritage District and the Town Center Mall.

1. The proposed use attains the objectives and purposes of the General Plan of the City of Sunnyvale as the project is compatible with the district and will allow additional entertainment along Murphy Avenue.
2. The proposed use ensures that the general appearance of proposed structures, or the uses to be made of the property to which the application refers, will not impair either the orderly development of, or the existing uses being made of, adjacent properties as the project does not involve any exterior modifications, complies with Federal, State and City regulations, and is not expected to be a nuisance to surrounding properties.

Recommended Conditions of Approval - Special Development Permit

In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, Permittee expressly accepts and agrees to comply with the following conditions of approval of this Permit:

Unless otherwise noted, all conditions shall be subject to the review of approval of the Director of Community Development.

1. GENERAL CONDITIONS

- A. This Special Development Permit allows dancing to pre-recorded music in the patio area from 8:00 p.m. to 12:00 midnight Sunday through Thursday and 8:00 p.m. to 2:00 a.m. Friday and Saturday. Dancing is not permitted at any other time.
- B. No Dish Dash employee, or other employee, including DJs or hired dancers may be used by the business. Only owner-operators may play pre-recorded music as listed in the documents submitted to the City.
- C. Live bands and professional dancing performances are prohibited.
- D. The Special Development Permit for the use shall expire if the use is discontinued for a period of one year or more.
- E. Any expansion or modification of the approved use shall be approved by separate application at a public hearing.
- F. Comply with all requirements of previously approved Special Development Permit File Number **2003-0668**.

2. COMPLY WITH OR OBTAIN OTHER PERMITS

- A. Comply with all Federal, State and City codes and ordinances, including California workplace smoking restrictions.